

**MINUTES  
BOARD OF ADJUSTMENT  
THURSDAY, JUNE 2, 2022  
HOOD ROOM, MATTHEWS TOWN HALL**

**PRESENT:** Chairman Lee Jenson; Vice Chairman Steven Lee; Member Aaron Baggarly, Gary Smith, and David Wieser; Alternate Members Bill Gibson; Board Attorney Anthony Fox; Senior Planner Rob Will; Senior Administrative Specialist/Deputy Town Clerk Shana Robertson

**CALL TO ORDER:**

Chairman Lee Jenson called the June 2, 2022 meeting of the Board of Adjustment to order at 7:00 pm.

**APPROVAL OF THE MINUTES**

Aaron Baggarly motioned to approve the minutes as presented and David Wieser seconded the motion. The minutes from the June 3, 2021 Board of Adjustment meeting were unanimously approved.

Steve Lee motioned to approve the minutes from the May 4, 2022 Board of Adjustment meeting. Gary Smith seconded the motion and it was unanimously approved.

**VARIANCE REQUEST: BA 2022-3, 549 Stratfordshire Drive**

**SWEARING IN:**

Planning and Development Senior Planner Rob Will, Joshua Mayor, and Michael Knox were sworn in by Mr. Jenson.

**STAFF REPORT:**

Senior Planner Rob Will said that the applicant was requesting a variance to encroach 20 feet into the 60-foot required rear setback in the R-20 zoning district in order to construct a single-family residence. The subject property is located at 549 Stratfordshire Drive, further identified by as tax parcel 213-025-07, and was currently zoned R-20 (Residential Single Family). Mr. Will said that the property was currently vacant but the applicant was looking to build a single-family residence.

Mr. Will said that the property had a uniquely irregular topography which made the positioning of the house limited to the rear of the property. The applicant was proposing to encroach into the rear yard by 20 feet (40 feet from the property line rather than 60 feet).

Mr. Will reviewed Section 155.604.1 of the Matthews Unified Development Ordinance (UDO) Table of Dimensional Standards that indicated that a rear yard setback for the principal structure must be 60 feet. Mr. Will also reviewed the application and submitted exhibits with the members of the Board. He noted that the applicant had received an inaccurate survey that had posted the rear setback as 20 feet.

Steve Lee asked if the R-20 zoning district had historically held the same setback dimensions. Mr. Will said that the neighborhood was plotted in 1969 before annexed into the Town of Matthews but the Matthews R-20 zoning district has always had a 60-foot rear setback requirement.

Mr. Jenson asked what the setbacks would have been on the property before the property was included within the town limits. Mr. Will said that he was unsure.

Mr. Smith asked if there were any prior requests or variances granted for other properties in the neighborhood. Mr. Smith added that it looked like there were similar issues with other homes in the vicinity of the property. Mr. Will said that the majority of the lots in this neighborhood have been build out and there maybe five vacant lots left. The Town had only had a request in June of 2020 for a recombination of two lots to the original 1969 plat.

Mr. Jenson asked if the majority of the homes were built prior to being incorporated into Matthews. Mr. Will said that he believed they were built before by the data that he had gotten from Mecklenburg County Polaris GIS. Mr. Jenson asked if staff knew of other homes that would be considered nonconforming into the 60-foot rear yard setback. Mr. Will said that they may be other properties but none that were confirmed.

Mr. Lee asked if the adjoining properties were notified of the variance request. Mr. Will said that they were.

#### **APPLICANT TESTIMONY:**

Joshua Mayor said that the property had been surveyed by the previous owners in 2018 and Mr. Mayor said that he had the land surveyed again on June 1, 2021. Mr. Mayor and his wife had purchased the property at 549 Stratfordshire Drive on June 29, 2021 based on the survey that showed a 20-foot rear setback. Since the purchase they had been working with an architect for eight months on designing their home. Mr. Mayor reviewed the site plan and the original planned location for the house. Mr. Mayor explained that the 60-foot setback would bring the house closer to the creek and down the hill. The problem they were having was trying to make the house they had been designing for eight months fit onto the space.

Mr. Mayor reviewed his provided exhibits with the members of the Board including other existing properties in the neighborhood that appeared to be in violation of the 60-foot rear setback. Mr. Mayor said that without the variance they would need to construct a 10+ foot retaining wall. The builder, Michael Knox, discovered the survey error on May 10, 2022.

Mr. Baggary said that he had visited the site and it looked like some grading and leveling had been performed along the rear of the property. Mr. Mayor said that they had performed some grading and the installation of a temporary driveway but stopped once they found the issue with the survey. Mr. Baggary asked if the applicant had considered any other footprints for the single-family residence on the site. Mr. Mayor said that they had not and the back left corner was the only area of the lot with any flat ground. Mr. Mayor reviewed the topographical issues of the parcel.

Mr. Lee asked Mr. Mayor if he had spoken to the Miller residence at 501 Trafalgar Place about the requested variance. Mr. Mayor said that he had not spoken to the property owners.

Mr. Jenson asked where the surveyor got their information for the 20-foot setback. Mr. Knox said that he did speak to the surveyor but was never told why or how the mistake was made.

Mr. Baggary asked how much grading was planned for the site. Mr. Knox said that they had looked at a couple of options including the minimum footprint that could be allowed without a variance. Mr. Knox said that there was a 16-foot grade change from the front of the house to the back of the house as outlined in the pink shaded area of Exhibit D. This would require a basement to be built as part of the house. Mr. Knox said that to avoid a basement, a tall crawlspace could be constructed in its place that would be 6 to 8-feet across the rear of the home. Mr. Knox reviewed Exhibit E and Exhibit G and said that the proposed footprint would be in the spirit of the neighborhood.

Mr. Lee asked what the quoted cost would be to add a basement or a tall crawlspace. Mr. Knox said that it could add between \$60,000 to \$100,000 depending on unfinished and size, to the cost of construction. Mr. Knox said that was a ballpark figure.

#### **TESTIMONY IN FAVOR OR OPPOSITION:**

Mr. Jensen asked if there was anyone present that would like to be sworn in and speak for or against the variance application. No one in attendance stepped forward.

#### **DELIBERATION:**

Mr. Wieser said that by looking at Polaris, there seemed to be a number of properties that appeared close to the property lines. Mr. Lee said that was true but Polaris was also not exact measurements.

Mr. Lee said that the Miller residence would be the most impacted by the granting of the variance. Mr. Lee said that these were large wooded lots and the subjected property had been vacant. The variance would allow for a house to be built much closer than anticipated.

Mr. Jensen said that he would like to see the original plat, the original zoning of the property before being annexed into the Town limits, and what those original setbacks were. Mr. Lee said that he looked up the 1969 plat on the Register of Deeds site and the only marking on the site was stormwater easements.

Board Attorney Anthony Fox said that the Variance was being requested from the current Matthews Unified Development Ordinance. Any new development needed to adhere to what was current for the Town of Matthews and currently that was a 60-foot rear yard.

Mr. Lee said that in looking at the lot it was a challenging site that was sloped and had a SWIM buffer.

Mr. Baggerly said that he agreed that there were some topographical issues with the property but when he visited the neighborhood, he saw other lots with similar topographical issues and the grade challenges were not uncharacteristic of the neighborhood. Mr. Baggerly said that another issue he was struggling with was that the applicant had indicated that they had only considered one house foot print and design. There were no alternative building designs considered. Mr. Baggerly added that by not granting the variance, the Board was not disallowing a single-family use on the lot, but were not allowing the design that the applicant wanted. Mr. Baggerly said that he felt this was more of a self-imposed hardship.

Mr. Gibson said that he agreed and if that applicant's desired footprint did not fit, an alternative layout should have been considered.

Mr. Lee said that the hardship was created by a licensed and insured surveyor who did not do their job right. Mr. Lee said that the surveyor should have to compensate the property owner for some of the cost to rectify the issue.

#### **FINDINGS OF FACT**

1. Unnecessary hardship would result from the strict application of this Title. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

**Unnecessary hardship would not result from the strict application of this Title. A reasonable single family residential use could be made of the property but would require a different design and layout of the house.**

2. The hardship does not result from conditions that are peculiar to the property, such as location, size, or topography. (Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.)

**There are similar topographical issues on neighboring properties and not particular to the subject property.**

3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

**Alternative site design and layout were not considered for property. The site could still be used for a single family detached home.**

4. The requested variance is consistent with the spirit, purpose, and intent of this Title, public safety is secured, and substantial justice is achieved.

**The impact potential to neighboring property was not consistent with the spirit, purpose, and intent of this Title.**

Mr. Baggerly motioned that the application for Variance BA 2022-3 be denied. The motion to deny passed unanimously.

#### **ADJOURNMENT**

Mr. Baggerly made a motion to adjourn the meeting at 7:35 pm. Mr. Wieser seconded and the motion passed unanimously.

Respectfully submitted,



Shana Robertson  
Senior Administrative Specialist/Deputy Town Clerk